Remarks

Claims 1, 4, and 9-13 are pending in this application. By this amendment, claim 9 is amended to further clarify the claim language. Care has been exercised to avoid the introduction of new matter.

Examiner Interview

Applicants appreciate the time and effort extended by the Examiner during the telephone conference of May 20, 2002. The Examiner's acknowledgement that the process claims 9-13 are in condition for allowance is appreciated.

However, the product claims 1 and 4 are still under rejection. Applicant requested to see, in writing, the basis for the Examiner's continued rejection of claims 1 and 4 in view of the previously submitted declarations. The Office Action dated June 5, 2002 followed the verbal request to the Examiner for the reasoning supporting the continuing rejection of claims 1 and 4. It should be noted that Applicant did not decline allowance of 9-13 but merely wished clarification and explanation of the rejection of claims 1 and 4.

Rejection of Claims Under 35 USC Section 103

Claims 1, 4, 9, and 11-13 stand rejected under 35 USC Section 103 (a) as being unpatentable over Collora et al. (US Patent #5,896, 692). The

Examiner generally relies upon the Collora et al. patent as disclosing the use of animal urine for a scent lure for such animals as deer, moose, or elk. This Examiner further relies upon the Collora et al. patent as teaching the use of urine from animals in estrus. The Examiner concludes by stating that it would have been obvious to apply this technique to animals such as caribou or mule deer since the Collora et al. patent specifically teaches the use of these techniques for white tailed deer, moose, or elk. The Examiner appears to accept use of the same types of techniques as being applicable to the entire range of: various deer types; moose; elk; caribou; and the like.

Claims 1, 4, and 9 stand rejected under 35 USC Section 103 (a) as being unpatentable over Christenson, II (US Patent 4, 944, 940). The Christenson, II patent is relied upon as teaching the use of urine for attracting animals such as deer. While the Christenson, II patent limits its specific teachings to the use of only individual animals; the Examiner interprets its teachings as including obtaining urine from more than one animal, so that use of urine from two animals would be obvious. The Examiner supports this position by reasoning that criticality for the use of urine from only two animals has not been demonstrated, so that it must be obvious.

Claims 1, 4, 9, and 11-13 stand rejected under 35 USC Section 103 (a) as being unpatentable over Bell (US Patent #5, 672, 342). The Bell patent teaches the use of animal urine to form scent attractants for animals such as deer. The Examiner further relies upon the Bell patent as teaching the use of urine-gathering stalls to collect urine from individual animals. The Examiner concludes that it would have been obvious to collect the urine from two animals, as it would have been obvious to collect urine from any number of animals from the same stall.

The Examiner has dismissed the Declarations under 37 CFO 1.132 (accompanying paper #6), filed July 11, 2001, for reasons not entirely apparent. The Examiner reasons that the prior art recognizes the natural occurrence of male deer in monitoring scrapes used by female deer in estrus. The Examiner has concluded that the difference in effect between the scent lures compared is merely a matter of degree, and not of kind.

Arguments

The rejections under 35 USC Section 103, and all of the reasoning supporting them are respectfully traversed. The evidence submitted by way of Declarations under 37 CFR 1.132 is a clear indication of success, and nonobviousness. The extreme differences in effect (over 90 percentile) make distinction between the present invention and the other scent lure

formulations to be one of kind, rather than of degree. The very fact that the success indicated in the attached Declaration, as well as those submitted with paper #6 on July 11, 2002, has not been previously achieved is a clear indication that it was never obvious to use the urine of only two does in estrus. Further, it should be understood that a difference in "kind" is not required. Criticality requires only a clear benefit over that of non-critical areas. Thus, the criticality of Applicant's claimed formulation is clearly demonstrated in the subject Declarations under 37 CFR 1.132.

New Declarations under 37 CFR 1.132 are attached hereto to address the deficiencies pointed out by the Examiner in the Office Action dated September 21, 2001 (paper #7). In particular, the new Declarations now state that all products used in the comparisons were obtained urine from does in estrus. To the best information of the Applicant, no other active ingredients were used, nor does the Applicant know of any other ingredient that is nearly as effective as a lure. Applicant was the supplier of the deer urine to the vendors of the other products (either single doe urine or product containing urine from three or more does in estrus) used in the comparisons with the Applicant's two-doe formula. Accordingly, any additional ingredients found in any of the other formulations that were compared with that of the Applicant are entirely irrelevant to the basic comparison of the

Applicant's claimed product with the other urine formulations specified in the Declarations.

Because the tests cited in the Declarations involved only deer, the claims have been modified to limit the lure to only deer. However, it should be understood that because of the similar behavior of deer, elk, moose, caribou, and similar animals, it is Applicant's belief that urine from only two animals in estrus will operate as effectively for other species as it does for deer. Further, the Examiner apparently agrees with this reasoning since in paragraph 2 of the Office Action dated June 5, 2002, the Examiner recognizes that techniques used for white tailed deer, moose, or elk would also be effective for caribou or muledeer.

It is respectfully submitted that nothing in the conventional art relied upon by the Examiner suggests a formulation using the urine of only two does in estrus. The Examiner's contention that this could occur in nature is entirely unfounded. The newly submitted Declarations include statements that a scrape containing the urine of only two does in estrus never occurs in nature. Accordingly, there is no reason for anyone to assume that there are special benefits to using the urine of only two does in estrus, absent the tests conducted by the Applicant. As indicated by the attached Declarations (as well as the ones formerly submitted) the effectiveness of Applicant's

claimed formulation far exceeds that of other formulations, as well as anything that occurs in nature. Accordingly, this is an unexpected result. Since instances of urine from only two does in estrus does not occur in nature (based upon the experience and knowledge of two individuals well-skilled in this art, specified in the Declarations under 37 CFR 1.132), there can be no reasonable suggestion that the claimed two-doe formulation is obvious on any basis. To conclude otherwise, one would have to rely on speculation since there is no support in either the conventional art or in observed natural circumstances.

Conclusion

Based upon the aforementioned comments and amendments, it is urged that all pending claims are in condition for allowance. Favorable reconsideration is respectfully requested.

Should the Examiner have any questions, comments, or suggestions, or should issues remain, the Examiner is respectfully requested to contact the Undersigned by telephone for prompt and satisfactory resolution.

Respectfully submitted,

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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231, ON 10/04/2002

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